

General conditions of contract for the supply of goods and materials

January 2010

1 Definitions

- 1.1 In the Contract (which will be made by the acceptance of a Tender or Quotation in whole or in part, and will comprise the Tender or Quotation as so accepted. The Conditions of Contract, The Specification and the Offer Schedule(s), the expression 'The Contractor' means the person, firm or Company whose Tender or Quotation is accepted. The expression 'Commission' means the Gambling Commission and the contract shall be construed accordingly.

2 Quantities

- 2.1 Any quantities stated in the Schedule(s) are those which are estimated as the probable requirements of the Commission for the period of the Contract, but the Commission has the option of requiring the supply and delivery under any item in the Schedule(s) of any greater or lesser quantity.

3 Quality

- 3.1 The goods or materials to be supplied under the Contract are to be of the quality or type and weight or measure (exclusive of packaging) mentioned in the Specification and/or Schedule(s), and shall correspond in every respect with the Commission's standard samples (if any) or (if so provided in the Specification) with the samples submitted by the Tenderer (which shall, on the acceptance of the Tender by the Commission, in such event become the standard samples for the purposes of the Contract); and be such as the Commission's officers, duly authorised, shall approve. A nominated officer of the Commission shall at all times have full power to inspect goods at all stages of the manufacture and shall be at liberty at all times to reject any goods as provided in Clause 4 below.
- 3.2 The Commission shall be entitled to order the Contractor to carry out at his expense such tests as are considered necessary for ascertaining the quality of goods and to certify that the goods have been tested with the drawings, the Specification and the Condition of Contract.

4 Rejections

- 4.1 Any goods or materials delivered, which, in the opinion of the Commission's authorised officers, are not to the stipulated specification, quality, weight or measure, or are not otherwise approved, may be rejected and notice of rejection may be given by the Commission to the Contractor at any time before payment falls due and failure to reject the goods or materials at any time before the date payment becomes due (whether or not the goods have been inspected) shall not create any deemed acceptance of the goods or

Gambling Commission – General conditions of contract (goods and materials)

materials. Any goods or materials which are rejected remain on the Commissions premises at the Contractors sole risk. Rejected goods or materials are to be removed by and at the expense of the Contractor immediately after the notice of such rejection, and the Contractor shall, if so required, supply and deliver other goods or materials in lieu within 7 days after the notice of such rejection. If any rejected goods or materials are not removed within 3 days after notice to the Contractor of such rejection, the Commission may cause the same to be removed, sold or otherwise disposed of, and charge the Contractor with all expenses incurred in such removal, sale or disposal, and the Commission shall not be liable for any damage or loss thereby sustained by the Contractor.

- 4.2** These time limits shall apply unless otherwise agreed between the Contractor and the duly officers of the Commission.

5 British and European standard specification

- 5.1** Where an appropriate British Standard Specification (or code of practice), European Standard Specification or International Specification is current at the date of the Tender or Quotation, all goods and materials used or supplied shall be in accordance with that standard and the Commissions Specification.

6 Delivery

- 6.1** The goods or materials are to be delivered free of charge to the Commission, and at the risk of the Contractor, in such quantities, to such locations, and in such manner as the Commissions officers, duly authorised, may from time to time order upon the Official Purchase Order Form. Provided that an order form issued verbally and subsequently confirmed by an order in writing upon the Official Purchase Order Form by an authorised officer of the Commission shall be deemed to have been properly made in accordance with this clause at the time of receipt by the Contractor of the verbal order, the Commission will not be liable for goods ordered in any other manner.
- 6.2** The Contractor may be asked to dispose of any surplus packaging that is attributed to the provision of the goods/services that they are providing to the commission at no additional cost (e.g. cardboard boxes, etc)
- 6.3** A delivery note, quoting the Official Purchaser Order Number must accompany all goods or materials supplied.
- 6.4** Invoices, quoting the Official Purchase Order Number and Delivery Note Number must be submitted in accordance with the instructions on the Official Purchase Order.
- 6.5** Liquated Damages - delivery of the goods or materials shall be made within 48 hours of receipt by the Contractor or the order unless otherwise agreed between the Contractor and the duly authorised officers of the Commission, and time shall be of the essence of the Contract. If the goods or materials of any portion thereof are not delivered within the time so specified, the Commission may recover from the Contractor as liquated damages, and not by way of penalty, five per cent of that part of the Contract price which is properly apportionable to the goods undelivered as aforesaid for each week during which such failure continues. Provided that the sum so recoverable shall not exceed five per cent of the contract price and shall be in full satisfaction of the Contractor's liability for such failure.
- 6.6** Goods in Transit - where the Contract provides for delivery elsewhere than as detailed in Clause 6(a) above, the goods shall remain at the risk of the Contractor until delivery is completed.

7 Prices

- 7.1** All prices quoted for the goods shall include the cost of all necessary works and processes required to ensure that the goods comply with the terms of this Contract.
- 7.2** The prices quoted by the Contractor shall be considered fixed for all orders placed during the period of this Contract unless the Contractor states in writing prior to the Contract being entered that the prices are subject to variation due to the costs of materials, wages and transport, etc. varying after the date of this Contract.
- 7.3** If the Tender is subject to price variation:
7.3.1 Prices shall remain firm for at least one month (or such longer period as shall be stated in the Tender) from the date of commencement of the Contract.
- 7.4** Any application for price variation after that shall be submitted in writing to the Commission at least 30 days before the proposed implementation date of the increase and be accompanied by relevant supporting documents.
- 7.5** If the Commission is not prepared to accept the price increase so proposed, the Commission shall have the right to terminate the Contract, giving the Contractor at least 30 days notice in writing, to expire not later than 90 days from receipt of the application. The current prices shall remain in force until the date of termination of the Contract in that event.
- 7.6** Where settlement discount is to be allowed to the Commission by the Contractor, the settlement discount period shall commence from the date of receipt of the goods or materials or the invoice whichever is the later and not from the date of the invoice.

8 Value added tax – increase of contract sum

- 8.1** Prices must be quoted net of Value Added Tax to the extent that the supply of goods or materials under the Contract is chargeable with Value Added Tax. The gross amount of the tax chargeable will be added to the Contract price.

9 Breach

- 9.1** If the Contractor shall fail to deliver the goods or materials or any proportion of them within the time or times specified in the Contract or shall supply goods or materials of unsatisfactory quality, the Commission without prejudice to any remedy for breach of Contract it may have, shall be at liberty to determine the Contract either wholly or in part and to purchase other goods or materials as the case may be of the same or similar description to make good:
- such default; and
 - in the event of the Contract being wholly determined, the goods or materials remaining to be delivered.
- 9.2** The amount of the Commissions loss in securing replacement goods or materials shall be paid by the Contractor to the Commission.

10 Entitlement to contract

- 10.1** The Commission has the right to contact with any person or persons, firm or company other than the Contractor for the supply and delivery of similar items.

11 Cancellation of contracts in case of corruption etc

11.1 The Commission shall be empowered to cancel the Contract and recover from the Contractor the amount of any loss resulting from the cancellation if the Contractor is guilty of any practice considered by the Commission to be improper or corrupt. This Clause covers such activities as inducements or gifts and acts prohibited by the Prevention of Corruptions Acts, 1889 – 1916 and the local Government Act, 1972, Sections 117(2) and (3). The Commission's decision on these matters is final.

12 Assignment and underletting of contracts

12.1 The Contractor shall not assign or underlet the Contract or any part of it and shall not sub-contract except with the written consent of the Commission.

13 Indemnity

13.1 The Contractor shall indemnify the Authority in respect of:

- any liability which may be imposed on the Commission under any Act of Parliament or Common Law in respect of personal injury to any person, whether employed by the Commission or not, occasioned by or in consequence of the performance of this Contract.
- any damage or injury to the property of the Commission by the Contractor, his workmen, servants or agents.

14 Insurance

14.1 The Contractor shall adequately insure against the liabilities referred to in Clause 13 and shall complete the Insurance Certification Form attached.

15 Strikes, lock out etc

15.1 The Contractor shall not be responsible for the consequence of any strikes, lock-outs or combinations of workmen.

16 Royal ties and patent rights

16.1 The Contractor shall fully indemnify the Commission for any claim or action that may be brought against it regarding infringement of copyright, patent or similar protected rights in respect of any item supplied under the Contract. All payments and royalties which may be payable shall be included by the Contractor in the prices named in his tender and shall be paid by him to the relevant persons.

17 Health and safety

17.1 All items delivered by the Contractor to the Commission shall comply with the provisions of British and European Legal Requirements and any other relevant Health and Safety Regulations and appropriate Codes of Practices in force or brought into force during the currency of the Contract

18 Drawings etc

18.1 All drawings, specifications, patterns, tools, free issue materials and other documents or things supplied by the Commission shall remain the property of the Commission and shall be returned to the Commission in good condition immediately upon request and they and the items of the Commission's Contract shall be treated by the suppliers as confidential and shall not be communicated to any other person so used by the Contractor for any purpose other than in connection with the Commission's Contract.

19 Law

- 19.1** The Contract shall be construed in all respects in accordance with the English Law. Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right of remedy to which the Authority are entitled in relation to the material goods or services ordered by virtue of statute or common law.

20 Warranties and guarantees

- 20.1** Without prejudice to the Commission's common law statutory and equitable rights under this Tender and any contract resulting there from the Contractor shall make available to the Commission the benefits of any standard Warranty normally offered in connection with the goods supplied by himself, at the option of the Commission, and of any standard warranty or guarantee offered by the manufacturer and by the suppliers of any components of such goods.

21 Conditions

- 21.1** These conditions shall have precedence over any printed condition appearing on any acceptance form, delivery form or other documents or letter emanating from the Contractors and such conditions shall have no effect whatsoever except insofar as they confirm the terms of this Contract.

22 Biodiversity

- 22.1** Tenderers' attention is drawn to the General Conditions of Contract requiring the Service Provider to take all reasonable steps to minimise and where possible avoid adverse impacts on the environment when performing the contract and to take all reasonable steps to restore, maintain and enhance biodiversity on the Commissions premises or any related thirty party premises.

- 22.2** In addition to submitting a tender based on the Contract specification drafted by the Commission and included with the tender documentation issued, tenderers are invited to submit variant bids that exceed the minimum environmental criteria set by the contract specification or that offer alternative solutions to meeting the specified outputs.

23 Intellectual property

- 23.1** The Contractor agrees to indemnify and keep indemnified the Authority and any Beneficiary against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process, article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

24 Force majeure

- 24.1** No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.
- 24.2** In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

24.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

25 Data protection

25.1 The Contractor shall comply with the Data Protection Act 1998 (**the 1998 Act**) and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Commission and any Beneficiary by the seventh data protection principle (**the Seventh Principle**) set out in the 1998 Act, namely:

- to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Commission and any Beneficiary by the Seventh Principle;
- only to process Personal Data for and on behalf of the Commission and any Beneficiary, in accordance with the instructions of the Commission or such Beneficiary and for the purpose of performing its obligations under the Contract and to ensure compliance with the 1998 Act;
- to allow the Commission to audit the Contractor's compliance with the requirements of this Clause 25 on reasonable notice and/or to provide the Commission with evidence of its compliance with the obligations set out in this Clause 25.

25.2 The Contractor agrees to indemnify and keep indemnified the Commission and any Beneficiary against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Commission and any Beneficiary as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Contractor, its employees or agents in the contractor's performance of the Contract or as otherwise agreed between the Parties.

25.3 Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the Commission and any Beneficiary with reasonable assistance in complying with subject access requests served on the Authority and any Beneficiary under Section 7 of the 1998 Act and the Contractor consulting with the Commission and any Beneficiary prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

26 Limitation of liability

26.1 Neither Party shall be liable to the other Party for any loss or damage, costs or expenses incurred or suffered by the other Party as a result of any breach of the terms of the Contract, unless the same were in the reasonable contemplation of the Parties at the time when they entered into the Contract.

26.2 Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of either Party under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £5 million in any one Year.

26.3 The Contract Price of the Goods under the Contract has been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in the Contract and the Parties each confirm that they will themselves bear or insure against any loss for which the other Party has limited its liability under the Contract.

27 Public reputation of parties/press releases

- 27.1 Both parties recognise their respective public reputations and legal responsibilities. Each party shall use all reasonable endeavours not to harm or compromise these.
- 27.2 The text of any press release or other communication to be published on behalf of the Contractor by or in the media concerning the subject matter of this Contract shall require the advance approval of the Commission.

28 Arbitration

- 28.1 All disputes, differences of questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract other than a matter or thing as to which the decision of the Commission is under the contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by the Commission and one by the Contractor or their Umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

29 Third party rights

- 29.1 None of the terms of this Contract are intended to be enforceable by any third party.

30 Environmental considerations

- 30.1 The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the Contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the Contractor shall:

- comply with all reasonable stipulations of the Commission or any Beneficiary aimed at minimising the packaging in which the products the subject of the Contract, or any products supplied by the Contractor to the Commission or any Beneficiary as part of performance of the services, are supplied
- promptly provide such data as may reasonably be requested by the Commission from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Commission or any Beneficiary under or pursuant to the Contract
- comply with all obligations imposed on it in relation to the products/services the subject of the Contract by the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC)
- label all products supplied to the Commission or any Beneficiary under the Contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation
- unless otherwise agreed with the Commission or any Beneficiary, insofar as any products supplied under the Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment and recycling and provide any information which the Commission or any Beneficiary may reasonably require from time to time regarding the costs of such activity

Gambling Commission – General conditions of contract (goods and materials)

- promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Commission or any Beneficiary to permit informed choices by end users
- where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.

30.2 The Contractor shall meet all reasonable requests by the Commission or any Beneficiary for information evidencing the Contractor's compliance with the provisions of this Clause.

31 Electronic Product information

31.1 The Contractor shall provide the Commission or, as the case may be, any Beneficiary the Product Information in such manner and upon such media as agreed between the Contractor and the Commission or, as the case may be, any Beneficiary from time to time for the sole use by the Commission and any Beneficiary.

31.2 The Contractor warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Commission or, as the case may be, any Beneficiary and that the Product Information does not contain any data or statement which gives rise to any liability on the part of the Commission or, as the case may be, any Beneficiary following publication of the same.

31.3 In the event the Product Information ceases to be complete and accurate, the Contractor shall promptly notify the Commission or, as the case may be, any Beneficiary in writing of any modification or addition to or any inaccuracy or omission in the Product Information.

31.4 The Contractor grants the Commission or, as the case may be, any Beneficiary a non-exclusive royalty free licence in perpetuity to use and exploit the Product Information and any Intellectual Property therein for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Commission or any Beneficiary contracts from time to time. No right to illustrate or advertise the Product Information is granted to the Contractor by the Commission or any Beneficiary as a consequence of the licence conferred by this clause 25.4 or otherwise under the terms of this Contract.

31.5 The Commission or, as the case may be, any Beneficiary may reproduce for its sole use the Product Information provided by the Contractor in the Commissions product catalogue and/or any Beneficiary's product catalogue from time to time which shall be made available on the National Health Service internal communications network in electronic format or made available on the Commission external website and/or any Beneficiary's external website or any other electronic media of the Commission or any Beneficiary (as the case may be) from time to time.

31.6 Before any publication of the Product Information (electronic or otherwise) is made by the Commission or, as the case may be, any Beneficiary, the Commission or, as the case may be, any Beneficiary will submit a copy of the relevant sections of the Commissions product catalogue or any Beneficiary's product catalogue (as the case may be) to the Contractor for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Contractor shall have no right to compel the Commission or any Beneficiary to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this clause or otherwise under the terms of this Contract.

Gambling Commission – General conditions of contract (goods and materials)

- 31.7** If requested in writing by the Commission or, as the case may be, any Beneficiary, the Contractor and the Commission or, as the case may be, any Beneficiary shall forthwith negotiate in good faith an agreement to use the Electronic Trading System.
- 31.8** The Contractor agrees to indemnify and keep indemnified the Commission and/or any Beneficiary against any liability, loss, costs, expenses, claims or proceedings whatsoever arising out of or in connection with any statement relating to the goods and services (including, without limitation, the Goods) or information or material on or description of the goods and services (including, without limitation, the Goods) provided by or on behalf of the Contractor which is included in the Commission's product catalogue or any Beneficiary's product catalogue from time to time (as the case may be) or any associated material produced by the Commission or any Beneficiary (as the case may be) for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Commission or Beneficiary contracts from time to time.
- 31.9** The Contractor shall not be required to indemnify or keep indemnified the Commission and/or any Beneficiary against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under this Clause as a result of the Commission or Beneficiary's wilful or negligent misrepresentation of any statement relating to the goods and services (including, without limitation, the Goods) or information or material on or description of the goods and services (including, without limitation, the Goods) provided by or on behalf of the Contractor which is included in the Commission's product catalogue or any Beneficiary's product catalogue from time to time (as the case may be) or any associated material produced by the Commission or any Beneficiary (as the case may be) for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Commission or Beneficiary contracts from time to time.

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Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:
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